

SCHOOL DISTRICT	COUNTY	APPLICATION NUMBER
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## Agreement

(Under the Leroy F. Greene State School Building Lease-Purchase Law of 1976)

This Agreement, ("Agreement") is effective upon initial project approval by the State Allocation Board of the State of California ("Board") and is made and entered into pursuant to Chapter 22, Part 10, Division 1 of the Education Code (commencing with Section 17700 thereof) entitled the Leroy F. Greene State School Building Lease-Purchase Law of 1976, including any subsequent amendments thereto, ("Act"), by and between the Board and the School District or County Superintendent of Schools acting as a School District, as named above ("District").

Whereas, the District has filed an application for funding from the Board for the acquisition of real property, which, if already identified, is (or, if not already identified, after it is identified, will be) more particularly described in the legal description in *Exhibit 1* attached hereto more and incorporated herein by reference ("Site"), and/or construction, reconstruction or modernization of school facilities on the Site, as more fully set forth in the District's application as identified by the Application or Project number set forth above; and

Whereas, the District either is the owner of the Site or is the lessee of a lease from the owner of the site, the term of which lease is at least equal to the term of this Agreement, or the District's application includes the acquisition of the Site (a copy of which deed, lease or deed of the present owner of the Site to be acquired is [or, if not already identified, after it is identified, will be] attached hereto and made a part hereof and marked as *Exhibit 2*); and

Whereas, the District will, when it has in its possession plans and specifications approved pursuant to Education Code Sections 17724 and 17725, file an amended application for the construction of school buildings and related facilities to be constructed on the Site, which amended application shall become a part of the District's application as identified by the Application or Project number set forth above; and

Whereas, the application includes the acquisition of certain furniture and equipment as approved by the Board; and

Whereas, the acquisition and/or construction on the Site and the acquisition of the furniture and equipment as described in the previous paragraphs of this Agreement, as the application may be amended from time to time by the Board and the District, shall hereinafter be referred to as the "*Project*"; and

Whereas, the Board has agreed to provide funds to the District, subject to the conditions contained herein and in the Act, said funds to be used, along with other funds available to the District, for the completion of the Project ("*Funding*");

Now, Therefore, in consideration of the above and the performance of mutual promises and agreements herein contained at the time and in the manner specified, the parties agree as follows:

**Item 1. Lien**

The Director of General Services shall have recorded lien(s), which shall be entitled "Certificate of Interest in Real Property", and shall be in the form as provided by the Board, as more particularly described below:

a. Lien on the Site

The lien on the Site shall be recorded in the county or counties in which the Site is located to assure as required by the Act that the District for the term of this Agreement maintains the Site and the Project as a school as required in this Agreement and the Act.

b. Lien on All District Real Property

The lien on all the District's real property shall be recorded in every county in which real property is located that is owned by the District to assure, as required by the Act, that, if the District disposes of any School buildings or land (including but not limited to portables), that the District meets the requirements of Section 17732, subdivision (d) of the Act for the term of this Agreement.

**Item 2. Term**

The term of this Agreement shall be forty (40) years from the date of the Notice of Completion of the Project, unless this Agreement is sooner terminated as provided in this Agreement or the Act. At such time as this Agreement is terminated, the Board shall release the two lien(s) created pursuant to this Agreement.

**Item 3. District Representative**

The District shall appoint one or more persons of the District's staff as the "*District's Representative*" to act as a liaison between the District and the Board and to perform all acts required or contemplated under this Agreement. The District shall inform the Office of Public School Construction ("*OPSC*") immediately of the name and title of its District Representative, and shall inform the OPSC - immediately whenever there is a change in the name of its District Representative. In the event there is no District Representative appointed, then the District's Superintendent shall act as the District Representative.

**Item 4. Availability of Funds**

The District understands that this Agreement is contingent upon the availability of funds and that the board shall incur no costs or liability as a result of the approval given to this project by the Board until funding becomes available to apportion to this project and the apportionment is made. The District shall be solely responsible for any costs arising from this project until such time as the Board shall apportion funds for this project. Further, to the extent the District proceeds with the project in advance of the apportionment, the District agrees to indemnify, defend and hold harmless the State, its officers, agents and employees from any and all claims and losses caused by the District accruing or resulting to any person, firm or corporation furnishing or supplying financing.

**Item 5. Responsibility and Indemnity**

The District understands and acknowledges, that all contracts entered into as a result of this agreement are District contracts to which neither the State nor the Board is a party.

The District shall be liable for all injuries, damages, debts or other liabilities caused by the district arising out of any contract entered into by the District as a result of this Agreement, and the Board shall not be liable for any such injuries, damages, debts or other liabilities caused by the district arising out of said contract(s). The Board shall be liable for all damages directly caused by the Board.

The District shall indemnify and hold harmless the board and its officers, agents and employees from any loss, or liability (including reasonable attorneys fees and costs) caused by the District arising out of or relating to any contract entered into by the District as result of this Agreement.

In the event a claim is made against the District by one of its contractors, nothing contained in this Item shall prevent the District from submitting an application to the Board for additional funds. The Board, in its sole discretion, may review the application and may or may not provide the District with financial assistance.

**Item 6. District's Agreement with its Architect**

The District shall enter into an agreement with an architect using either a the form of agreement furnished by the Board, or such other agreement approved by the District's counsel, so long as such agreement contains the provisions and concepts listed in the Board's requirements for an architect agreement.

**Item 7. Reimbursement of Costs Incidental to the Acquisition of the Site and Preparation of Plans**

All costs necessary and incidental to the acquisition of the Site and preparation of plans, including, but not limited to, surveys, testing, architects' fees, and legally required fees, may be paid from the Funding if such expenditures are deemed eligible by the Board .

**Item 8. Sale of Pre-Existing Improvements on the Site**

If after the District acquires the Site the District desires to sell any improvements of any kind whatsoever or any property existing on the Site at the time the District acquired the site, the District shall sell such improvements at fair market value, which value must be approved by the Board in writing prior to the completion of the sale, unless the Board waives the requirement for such approval, and the Funding shall be reduced by such amount.

**Item 9. Construction of the Project or Other Improvements**

The District shall deliver to the Executive Officer copies of all plans and specifications for the Project. The District shall not commence construction of the Project, nor make or cause to be made any other improvement upon the Site, without the prior written approval of the Board , unless otherwise authorized by the Act. The District shall comply with the Act and regulations promulgated thereunder regarding the construction and completion of the Project.

The District shall use the plans and specifications for construction of the Project that are approved by the Board. All costs and fees necessary and incidental to (1) the inspection of the construction on the Site for the Project, and (2) construction testing, including but not limited to materials testing, may be paid from the Funding.

**Item 10. Signage Language**

The District shall cause to be erected erect signage on the Project Site in the manner specified by the Board. The cost of the signage shall be an eligible project cost within the building cost allowance. The signage shall remain in place until the dedication of the project.

**Item 11. Notification of Pending or Threatened Litigation**

If upon the date of execution of this Agreement there is any litigation pending or threatened relating to the validity of this Agreement, the financing of the Project or the construction of the Project, the District shall notify the Board and the District shall not obligate any portion of the Funding, nor will funding be released without the prior written approval of the Executive Officer.

**Item 12. Changes in Plans and Specifications**

Once the Board has approved the plans and specifications for the Project, the District shall not change the plans and specifications without the prior written approval of the Board. When required by Education Code Sections 17724 and 17725, any such changes also shall be subject to the approval of the Department of General Services and the Department of Education.

**Item 13. Categories of Allowable Costs**

Once the board has approved the Project, the District may not transfer funds from one category of allowable costs to be paid under this Agreement to another category of allowable costs without the prior written approval of the Board. The funding shall be reduced by such amount not expended in each category of allowable costs.

**Item 14. Change Orders**

Changes to the approved construction contract may be made only in accordance with the change order procedure authorized by the Board. The cost of any change order that was not approved in accordance with the Board's procedure shall be at the sole cost and expense of the District and shall not be paid from the Funding. If a change order exceeds its category of allowable costs, that amount that exceeds its category of allowable costs, shall not be paid from the Funding.

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### **Item 15. Changes to the Project**

During the term of this Agreement, the District shall not make any changes to the Site or facilities that are inconsistent with the Project's original purpose without the prior written approval of the Board.

### **Item 16. Assessments**

During the term of this Agreement, the District shall be liable for and discharge at the sole cost and expense of the District any assessments validly made against the Site. Assessments resulting from the completion of the Project may be paid from the Funding.

### **Item 17. Repairs, Renewals or Replacements**

During the term of this Agreement, the District, at the sole cost and expense of the District, shall maintain the Project in good and safe working order and condition and shall manage, operate, and maintain the Project, including without limitation, security service, janitor service, grounds-keeping, power, gas, telephone, light, heating, air conditioning, water and all other utility services.

In the event the Project requires repairs, renewals replacements as a result of damages from any cause, casualty, or otherwise, the District at the sole cost and expense of the District shall make the same. In such event, if the Project is still justified by the District, the Board shall give to the District any insurance proceeds received by the Board due to a loss related to the Project to assist the District in making such repairs, renewals or replacements.

### **Item 18. Liens, Charges and Encumbrances**

During the term of this Agreement, at the sole cost and expense of the District, the District shall keep the Site clear of all liens, charges and encumbrances, except any arising by act of the Board and except as required for easements for utilities or rights-of-way.

### **Item 19. Access to Premises**

During the term of this Agreement, the Board and its designees shall have the right to enter the Site and all buildings thereon during reasonable business hours.

### **Item 20. Sublease or Assignment of Site; Use of Site**

During the term of this Agreement, the District shall not, without the prior written approval of the Board, sublet or assign the Site or any portion thereof, or grant any use thereof that is not revocable on 30 days or less notice. The District shall permit no use of the Site which is in violation of law, including the Act.

### **Item 21. Compliance with the Act**

During the term of this Agreement, the District shall comply with all applicable terms of the Act.

### **Item 22. Insurance**

During the period of construction of the Project, the District shall insure the Project is covered with a course of construction [builders' risk] insurance policy provided by an admitted insurance company, which cost shall be paid from the Funding.

Immediately following acceptance of the Project from the contractor, the District at the sole cost and expense of the district, shall provide a policy or policies of insurance for the benefit of the District and the Board, both of whom shall be insured, including self insurance, from an admitted insurance company insuring against (1) loss or damage, resulting from fire, lightning, vandalism, malicious mischief, and such other perils ordinarily defined as extended coverage, and (2) such additional risks as the Board and District may agree should be insured against in such amounts and under such provisions as are satisfactory to each, provided that they shall provide that payment of claims that satisfy the State's interest shall be made solely to the Board for the purposes described in this Agreement. Such policies shall be maintained during the term of this Agreement.

During the term of this Agreement, the District, at the sole cost and expense of the District, also shall provide and keep in force public liability and property damage policies protecting both the Board and the District under such provisions and in such amounts as are satisfactory to each.

The District covenants that the District shall obtain insurance adequate to protect the interests of the District and the Board consistent with this agreement.

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### Item 23. Condemnation

In the event the entire Site and the Project, or so much thereof as to render the same unusable for the purposes for which they were intended, is permanently taken under the power of eminent domain or sold to any government agency threatening to exercise such power, the proceeds thereof, whether for the Project or the Site, shall be paid to the Board, which shall use the proceeds to assist the District to build a similar project, if required, and if not required, shall be retained by the Board.

In the event that less than all of the Site and Project shall be taken under the power of eminent domain or sold to any governmental agency threatening to exercise such power and the remainder is usable for the purposes intended, this Agreement shall not terminate. If the condemnation award is, or sale proceeds are sufficient to repair or restore the necessary portion of the Project, and both the Board and the District give their approval, the Board shall receive the entire condemnation award or sale proceeds, whether for the Site or Project, and shall repair or restore the Project in such manner as the parties may agree. Any balance of the condemnation award or sale proceeds remaining after the Project has been so repaired or restored shall be retained by the Board. Should the parties fail to concur in the practicability of restoring the project with such funds, or the District does not agree thereto, the entire proceeds from such condemnation, whether of the Site or Project, shall be retained by the Board.

The District shall not sell or convey any interest in the Project to any entity threatening condemnation without the prior written approval of the Board.

### Item 24. Insurance and Condemnation; 50/50 Projects

In the event under either of the two preceding Items entitled Insurance and Condemnation the Board retains proceeds, if either (a) the District has participated in the Project by contributing fifty percent (50%) of the cost of the Project, or (b) after the completion of the Project the District has added improvements to the Site for which insurance or condemnation proceeds were paid, the value of which improvements exceed one percent (1%) of the Board's Funding to the District, then such insurance or condemnation proceeds shall be divided between the Board and the District in proportion to either (a) fifty percent (50%) each to the Board and the District, or (b) the ratio of the amount of the Funding as compared to the amount of improvements provided by the District after the completion of the project.

### Item 25. Headings

The paragraph headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.

### Item 26. Severability

If any section, subsection, sentence, clause or phrase of this Agreement, or the application thereof to either party or any other person or circumstance, is for any reason held invalid, it shall be deemed severable and validity of the remainder of the Agreement or the application of such provision to the other party or to any person or circumstance shall not be affected thereby.

### Item 27. Alteration or Amendment

No alteration of or amendment to this Agreement shall be deemed binding upon the parties unless the same has been executed thereby by the Board and the District in writing.

### Item 28. Notices

All notices, requests or communications required or permitted to be given in this Agreement shall be in writing and, mailed or delivered to the respective party as follows:

Board: State Allocation Board  
501 J Street, Suite 400  
Sacramento, CA 95814  
Attention: Executive Officer

District: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, CA \_\_\_\_\_ - \_\_\_\_\_  
Attention: District Representative

The Board and the District may, by notice given hereunder, designate any further or different address to which subsequent notices and other communications shall be sent.

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### Item 29. Governing Law; Venue

The laws of the State of California shall govern this Agreement, the interpretation thereof and any right or liability arising hereunder. Any action or proceeding to enforce or interpret any provision of this Agreement shall be brought, commenced or prosecuted in Sacramento County, California.

*In Witness Whereof*, the Board has caused this Agreement to be executed by its duly authorized officers and the District has caused this Agreement to be executed by the Trustees of said District and attested by the Clerk/Secretary of the District, as of the day and year set forth above.

STATE ALLOCATION BOARD

By \_\_\_\_\_  
Executive Officer

COUNTY SUPERINTENDENT OF SCHOOLS OR  
SCHOOL DISTRICT BOARD OF TRUSTEES

By \_\_\_\_\_  
Chairperson/President

By \_\_\_\_\_  
Member

By \_\_\_\_\_  
Member

By \_\_\_\_\_  
Member

By \_\_\_\_\_  
Member

By \_\_\_\_\_  
Member